

135-45 West Kingsbridge Avenue Assoc., and Time Equities, Inc. and Service Employees International Union, Local 32E, AFL-CIO. Case AO-283

December 21, 1990

ADVISORY OPINION

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT, DEVANEY, OVIATT, AND
RAUDABAUGH

Pursuant to Sections 102.98(a) and 102.99 of the National Labor Relations Board's Rules and Regulations, on November 14, 1990, 135-45 West Kingsbridge Avenue Assoc., and Time Equities, Inc. (the Employer) filed a petition for an advisory opinion as to whether the Board would assert jurisdiction over its operations.

In pertinent part, the petition alleges as follows:

1. A representation proceeding, Case 75770, is currently pending before the New York State Labor Relations Board (SLRB) in which Service Employees International Union, Local 32E, AFL-CIO (the Union) is seeking to represent the superintendent of a building located at 135-45 West Kingsbridge Road, Bronx, New York.

2. The Employer is engaged in the business of managing real estate. The Employer manages the 135-45 West Kingsbridge Road building, a 59-unit residential apartment building in which 7 commercial enterprises operate, and supervises, directs, and pays the building superintendent.

3. During the past calendar year, the Employer had total gross revenues equaling or exceeding \$1 million, and purchased materials or services valued in excess of \$50,000 directly from outside the State of New York.

4. The aforesaid commerce data has been neither admitted nor denied by the Union, and has not been considered by the State Board.

5. There is no representation or unfair labor practice proceeding involving the same dispute pending before the Board.

Although all parties were served with a copy of the petition for advisory opinion, none filed a response as permitted by Section 102.101 of the Board's Rules.

Having duly considered the matter, the Board is of the opinion that it would assert jurisdiction over the Employer. Although it cannot be determined from the allegations in the petition whether the Employer's operations would separately satisfy either the residential or the commercial standard established by the Board for employers that own and/or manage real estate,¹ inasmuch as the petition alleges that the Employer's gross revenues exceeded \$1 million in the past calendar year, and that its out-of-state purchases of materials or services exceeded \$50,000 during the same period, we find that it would effectuate the policies of the Act to assert jurisdiction over the Employer.²

Accordingly, the parties are advised that, based on the foregoing allegations and assumptions, the Board would assert jurisdiction over the Employer.³

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would require the Employer to submit further information regarding its real estate operations before granting the petition and issuing an advisory opinion. Cf. *Century Assets*, 280 NLRB 1352 (1986).

¹ See *Parkview Gardens*, 166 NLRB 697 (1967), and *Imperial House Condominium*, 279 NLRB 1225 (1986), aff'd. 831 F.2d 999 (11th Cir. 1987) (establishing \$500,000 standard for residential apartments and for condominiums and cooperatives, respectively); and *Mistletoe Operating Co.*, 122 NLRB 1534 (1959) (holding that jurisdiction will be asserted over commercial office buildings when the employer's gross annual revenue amounts to \$100,000, of which \$25,000 is derived from organizations whose operations meet any of the Board's standards exclusive of the indirect outflow or indirect inflow standards).

² See *Mandel Management Corp.*, 248 NLRB 186 (1980). In so finding, we have assumed that the Employer is a single employer with respect to the operations included in its commerce data.

³ The Board's advisory opinion proceedings under Sec. 102.98(a) of the Board's Rules are designed primarily to determine whether an employer's operations meet the Board's "commerce" standards for asserting jurisdiction. Accordingly, the instant Advisory Opinion is not intended to express any view as to whether the Board would certify the Union as representative of the petitioned-for unit under Sec. 9(c) of the Act. See generally Sec. 101.40(e) of the Board's Rules.